

FCC MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 14 11 51 PM '00

In the Matter of

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

CC Docket No. 94-129

Qwest Corporation
Sully Buttes Telephone Cooperative, Inc.
Joint Petition for Waiver

ORDER

Adopted: September 8, 2000

Released: September 11, 2000

By the Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Qwest Corporation (Qwest) and Sully Buttes Telephone Cooperative, Inc. (Sully Buttes) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to enable Sully Buttes to become

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190

³ On July 25, 2000, Qwest and Sully Buttes filed a Joint Petition for Waiver of the Commission's carrier change rules relating to Qwest's transfer to Sully Buttes of approximately 2,400 access lines from the South (continued....)

the preferred carrier of certain consumers currently presubscribed to Qwest, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. Qwest and Sully Buttes seek a waiver of our verification rules to allow Sully Buttes to be designated the preferred local carrier for certain customers of Qwest without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Qwest and Sully Buttes a waiver, subject to the conditions represented in their filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict

Dakota exchange of Sisseton (Waiver Petition). On September 6, 2000, Qwest supplemented the Waiver Petition (Supplement) with a copy of its pre-transfer customer notification letter (Attachment A).

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order*, 14 FCC Rcd at 1593, 1594, paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that Qwest and Sully Buttes have demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Sully Buttes to transfer to its own customer base the affected Qwest customers. In the Waiver Petition, Qwest and Sully Buttes state that, as part of a boundary change, Qwest is transferring to Sully Buttes approximately 2,400 access lines located in the South Dakota exchange of Sisseton. Sully Buttes will acquire substantially all of Qwest's assets used to provide local telecommunications services to those lines, including the affected customer base, and will provide local services on a presubscription basis to Qwest's former customers.¹² Qwest and Sully Buttes further note that some of the Qwest customers may have to change long distance carriers (intrastate or interstate), if they currently use a carrier not present on Sully Buttes' switch. A Sully Buttes representative will contact those customers to coordinate a carrier change at no charge.¹³

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former Qwest customers might temporarily lose their presubscribed local service when Qwest ceases to provide such service in the affected exchanges. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of local service to the transferred customers.

7. We find that Qwest and Sully Buttes have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing local service, and because Qwest and Sully Buttes have agreed to notify the affected customers as described below. Qwest and Sully Buttes state that a two-step process to notify the affected customers of the transaction has already begun, with Qwest sending notification letters pursuant to its application requesting authority under section 214(a) of the Communications Act of 1934, 47 U.S.C. § 214(a), and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue operations in the Sisseton exchange.¹⁴ These initial notification letters informed the affected customers that, after the transfer of service from Qwest to Sully Buttes, they would receive the same local telephone service with no changes, that they would be

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 2-3.

¹³ Waiver Petition at 3.

¹⁴ See Supplement at I, Attachment B.

free to select new local basic or local long distance service providers, and that they would be able to contact Qwest free of charge with any questions regarding the transfer.¹⁵ According to Qwest and Sully Buttes, once the proposed sale has been consummated, Sully Buttes will send these customers a "welcome letter" notifying them of that event, and assuring them that no charges or rate increases for local service will be imposed as a result of the transaction.¹⁶ In the welcome letter, Sully Buttes will advise the affected customers that the transfer of their local service may require them to change their intra-state and/or interstate long distance carrier if those carriers are not present on Sully Buttes' switch. In the letter, Sully Buttes will also promise that one of its representatives will call each customer in that situation to coordinate a switch to another long distance carrier at no charge.¹⁷ In addition, the welcome letter will provide customers with a toll-free number to call with any questions they may have about the transition.¹⁸ We conclude that these conditions will adequately protect the rights of Qwest's transferred customers.¹⁹

8. For the foregoing reasons, we grant Qwest and Sully Buttes a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Qwest's and Sully Buttes' provision of customer notification, as described above and further detailed in the Waiver Petition and Supplement.

III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the joint waiver request filed by Qwest Corporation and Sully Buttes Telephone

¹⁵ See Supplement, Attachment A.

¹⁶ See Waiver Petition, Attachment A.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ In addition, we note that Sully Buttes' welcome letter states that Sully Buttes will be responsible for all service issues. See Waiver Petition, Attachment A.

Cooperative, Inc. on July 25, 2000, and supplemented on September 6, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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Associate Chief,
Accounting Policy Division,
Common Carrier Bureau